

STAFF REVIEW AND RECOMMENDATION

Variance Case #: V2014-01

Legistar #: 20140052

Board of Zoning Appeals Hearing: Monday, February 24, 2014 – 6:00 p.m.

Property Owner: Osvaldo Izaguirre-Guerrero
829 Toliver Street
Marietta, GA 30060

Address: 829 Toliver Street

Land Lot: 11640 District: 16 Parcel: 0210

Council Ward: 5A Existing Zoning: R-4 (Single Family Residential 4 units/acre)

Special Exception / Special Use / Variance(s) Requested:

1. Variance to request to reduce the required side yard setback for an attached, open and unenclosed carport from 5 ft. to 0 ft. [§ 708.04 (H)] [§ 710.14 (A)]

Statement of Fact

As per section 720.03 of the Comprehensive Development Code of Marietta, the Board of Zoning Appeals may alter or modify the application of any such provision in the Development Code because of unnecessary hardship if doing so shall be in accordance with the general purpose and intent of these regulations, or amendments thereto, and only in the event the board determines that by such alteration or modification unnecessary hardship may be avoided and the public health, safety, morals and general welfare is properly secured and protected. In granting any variance the board of zoning appeals shall designate such conditions in connection therewith as will, in its opinion, secure substantially the objectives of these regulations and may designate conditions to be performed or met by the user or property owner, out of regard for the public health, safety, comfort, convenience, and general welfare of the community, including safeguards for, with respect to light, air, areas of occupancy, density of population and conformity to any master plan guiding the future development of the city. The development costs of the applicant as they pertain to the strict compliance with a regulation may not be the primary reason for granting a variance.

Criteria:

1. Exceptional or extraordinary circumstances or conditions *are/are not* applicable to the development of the site that do not apply generally to sites in the same zoning district.
2. Granting the application *is/is not* necessary for the preservation and enjoyment of a substantial property right of the applicant, and to prevent unreasonable property loss or unnecessary hardship.
3. Granting the application *will/will not* be detrimental or injurious to property or improvements in the vicinity of the development site, or to the public health, safety, or general welfare.

PICTURES



829 Toliver Street



Carport at 829 Toliver Street

Recommended Action:

Disapproval. Mr. Osvaldo Izaguirre-Guerrero, the owner of 829 Toliver Street, is requesting a variance to reduce the required side yard building setback on property zoned R-4 - to allow for an open, unenclosed carport that is attached to the house - from 5 ft. to 0 ft. The subject property and the adjacent properties to the south, east and west are zoned R-4 (Single Family Residential (4 units/acre); and contain single family detached homes. The adjacent property to the north, while zoned R-4, is the location of the main offices of the Marietta City Schools.

During a routine neighborhood inspection, the City's Code Enforcement Department observed construction of the carport on this property without a permit. Mr. Guerrero was cited for building without a permit and for building too close to the property line. He was then told that his options were to either remove the carport or to seek a variance. At that time, construction was stopped until the setback issue could be resolved.

In the R-4 zoning regulations, when an accessory building is attached to the house, it is deemed to be part of the house and must meet all required setbacks. In this case, the required side yard setback is 10 feet. However, under Section 710.14 of the Zoning Ordinance, an open, unenclosed fixture, such as a porch or a carport, are allowed to project into the building setback by up to 50%. Therefore, Mr. Guerrero is requesting to be allowed to keep the carport as it currently stands, and in order to do so, is seeking to reduce the required setback for the attached carport addition from 5 feet to 0 feet.

Currently, the supporting posts of the carport are approximately 2 feet inside the property line, and the eaves of the carport roof extend to the property line. As shown in the attached pictures, and as confirmed verbally by Mr. Guerrero, the two neighbors have worked together to construct each of their fences; and both the fence material and hinges are of matching material. Mr. Guerrero reported that his neighbor does not object to the carport, and will be providing a letter to that effect. (Staff had not received such a letter by the deadline to publish the report.)

Staff understands the need for the carport, and the fact that this location may be logical given the location of the driveway along the side of the house. However, there does not appear to be enough room to erect such a carport without encroaching upon the building setbacks. The applicant, Mr. Guerrero, has not given any indication that a hardship exists on this property, as it appears that there is sufficient area in the rear yard to provide a detached carport that could meet zoning requirements. Allowing the proposed structure so close to the property line would do nothing to enhance the public health, safety, or general welfare of the property or the neighborhood, and as such, ***staff recommends denial of the requested variance.***

